BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
James Haim Isidoro Bicher, M.D.	)	**Case No. 800-2016-025178**
Physician's and Surgeon's Certificate No. A 37798	)	
Respondent	)	

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 7, 2019 **.**

IT IS SO ORDERED September 30, 2019 **.**

MEDICAL BOARD OF CALIFORNIA

By: _____
Kimberly Kirchmeyer,
Executive Director

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRISTINA SEIN GOOT
Deputy Attorney General
State Bar No. 229094
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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES HAIM ISIDORO BICHER, M.D. 2213 NE 37th Drive Fort Lauderdale, FL 33308 Physician's and Surgeon's Certificate No. 37798, Respondent.	Case No. 800-2016-025178 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christina Sein Goot, Deputy Attorney General.

2. James Haim Isidoro Bicher, M.D. (Respondent) is represented in this proceeding by attorney Alexandra de Rivera, whose address is 1990 South Bundy Drive, Suite 777, Los Angeles, California 90025.

3. On December 12, 1981, the Board issued Physician's and Surgeon's Certificate No. A 37798 to Respondent. That license expired on May 31, 2017, and has not been renewed.

JURISDICTION

4. Accusation No. 800-2016-025178 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 2, 2019. Respondent timely filed a Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2016-025178 is attached as Exhibit A and is incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-025178. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2016-025178, agrees that he has thereby subjected his license to disciplinary action and hereby surrenders his Physician's and Surgeon's Certificate No. A 37798 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED THAT Physician's and Surgeon's Certificate No. A 37798, issued to Respondent James Haim Isidoro Bicher, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2016-025178 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2016-025178 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Alexandra de Rivera. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 9-11-19

JAMES HAIM ISIDORO BICHER, M.D.
Respondent

I have read and fully discussed with Respondent James Haim Isidoro Bicher, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 9/11/19

ALEXANDRA DE RIVERA
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 9/13/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-025178

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES HAIM ISIDORO BICHER, M.D. 12099 West Washington Boulevard. #304 Los Angeles, CA 90066-0549 Physician's and Surgeon's Certificate No. A 37798, Respondent.	Case No. 800-2016-025178 **ACCUSATION**

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On December 12, 1981, the Board issued Physician's and Surgeon's Certificate Number A 37798 to James Haim Isidoro Bicher, M.D. (Respondent). That license expired on May 31, 2017, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118 of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he committed gross negligence in his care of Patient 1. The circumstances are as follows:

9. At all times relevant to the allegations herein, Respondent was the Medical Director of Bicher Cancer Institute, a.k.a, Valley Cancer Institute, a.k.a., Elite Oncology Medical Group (Elite Oncology).

10. Patient 1 was originally diagnosed with prostate cancer in 2002. For several years, his cancer was under control with the Prostate-Specific Antigen (PSA) blood test levels staying very low. The levels began to rise and, by 2009, documented recurrence of cancer led to Cryotherapy treatment of the prostate gland. Shortly thereafter, a pelvic lymph node biopsy showed metastatic cancer in the node(s) (Stage IV) and physicians suggested watchful waiting or hormonal treatment.

11. On August 22, 2013, Patient 1 was first seen at Elite Oncology. He was misclassified as Stage III and offered participation in a "research study" using hyperthermia and radiation to re-treat the prostate, and also treat the seminal vesicles and pelvic nodes, with the hope of curing the cancer.

12. Patient 1 completed extensive treatment with Respondent and his associates at Elite Oncology and, in 2014, began to have symptoms indicating radiobiologic failure beginning in the organ systems of the pelvis. Patient 1 was eventually placed on comfort care and died in early 2015.

13. The standard of care is to use hyperthermia and radiation to treat surface cancers that extend into the subcutaneous tissue.

14. Patient 1's prostate cancer is not included in the list of treatable cancers for the type of hyperthermia performed on him. His cancer was not at the surface level, but at a very deep level inside the pelvis. The lymph nodes were also at very deep levels of the pelvis. The hyperthermia device is not capable of providing heat to this level of depth and could never treat to

a depth or to the sites of Patient 1's cancer. Respondent was specifically trained concerning the hyperthermia device, and use of the device on Patient 1 was an extreme departure from the standard of care.

15. The use of radiotherapy and hyperthermia together has always been to try and control metastatic or recurrent cancer at the surface level. Where there has been prior radiotherapy, the overall dose and number of fractions should be very limited and hyperthermia should be limited to those times of radiotherapy. The standard of care for use of hyperthermia and radiation is that patients with prior radiotherapy are to receive a dose of 400cGy, 2 fractions per week, for a total dose of 32Gy or 36Gy. Hyperthermia treatments are to be given twice weekly at the time of radiotherapy.

16. Respondent used a non-standard and non-accepted form of extended radiation that he described as hyperfractionation along with daily hyperthermia sessions. Respondent's protocol using hyperthermia equipment in a manner not according to the manufacturer's listing and training instructions was an extreme departure from the standard of care.

17. When using simulation and CT simulation on a patient, the standard of care is to have the patient set up in the supine position for treatment of the pelvis. A 3D laser alignment system allows placement of markers on the body's surface that will also be shown on x-rays for indexing the patient on the initial simulation and to make sure alignment is maintained throughout the course of treatment.

18. Upon completion of simulation and CT simulation, Respondent and his associates knew that there was major overlap of their proposed fields of treatment into the upper two thirds of the previous radiation fields of treatment by Patient 1's previous provider, which should have alerted them to lower the radiation dose so that overdosing would not occur. Respondent's failure to thoroughly understand the implications of re-treating the prostate was an extreme departure from the standard of care.

19. During the process of computer-aided treatment planning, CT cross-sectional pictures are used to identify the areas to be treated and normal tissue and organs are also marked and listed as targets to avoid. The standard of care is for the physician to review and specifically outline the

targets to be treated. The treatment planning software allows the dosimetrist and physicist along with the physician to implement how the beams are going to approach and go through the designated tumor-bearing lymph nodes and prostate, and minimize the dose going to the large bowel, including sigmoid, and small bowel, including ilium. The bladder can also be outlined and excluded from treatment as much as possible.

20. The CT scan films used to set up the 5-field Intensity Modulated Radiation Therapy (IMRT) treatment plan for Patient 1 intersected in the pelvis. No lymph nodes were designated to be treated. The prostate and seminal vesicles were not outlined and no attempt was made to use the computer-aided software to integrate the five fields, concentrate the dose into the target lymph nodes and prostate, and reduce the dose to any normal tissue and organs. Respondent's failure to target the cancer resulted in total treatment of the normal tissues and organs of the lower abdomen and pelvis so that the designated planned tumor volume (PTV) resulted in the intestines receiving the full dose that should have been intended for the target lymph nodes and prostate only. This is an extreme departure from the standard of care.

21. The standard of care for radiation oncology is to avoid damage to normal organs and tissues. A radiation oncologist must have an understanding of dose limitations.

22. The prescription for radiation therapy treatment written for Patient 1 was excessive. To try and re-treat a significant portion of the prior treatment field, which had received 7560cGy, with another 7000cGy, would total over 14000cGy in the prostate, seminal vesicles, rectum, lower small intestine, sigmoid colon, and ilium. The treatment field (above the re-treated area) over the rest of the upper pelvis and lower abdomen would still receive a total dose of 7000cGy, which is above the allowable limits for normal tissues and organs. The failure to understand dose limitations for normal tissue and organs is an extreme departure from the standard of care.

23. The standard of care for use of hyperthermia equipment, particularly in a protocol setting, is to have proper temperature monitoring in the cancer, overlying skin, and nearby organs or tissues.

24. When conducting hyperthermia treatments on Patient 1, Respondent failed to monitor the tumor or normal tissue temperature, which is an extreme departure from the standard of care.

25. Respondent's acts and/or omissions as set forth in Paragraphs 9 through 24, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence, pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Act)

26. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that Respondent engaged in repeated negligent acts during his care and treatment of Patient 1. The circumstances are as follows:

27. The allegations of the First Cause for Discipline are incorporated by reference as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Repeated Failure to Participate in an Interview with the Board)

28. Respondent's license is subject to disciplinary action under section 2234, subdivision (h) of the Code, in that the Respondent failed, in the absence of good cause, to attend and participate in an interview with the Board, despite being the subject of an investigation by the Board. The circumstances are as follows:

29. Respondent was the subject of an investigation by the Board.

30. On April 24, 2018, the Board's investigator left a message with Respondent attempting to schedule an interview.

31. On April 30, 2018, the Board's investigator left another message with Respondent attempting to schedule an interview.

32. On May 8, 2018, the Board's investigator left a message with Respondent attempting to schedule an interview. On the same date, the Board's investigator sent letters to Respondent by regular and certified mail requesting to schedule an interview.

33. On May 22, 2018, the Board's investigator received a call from Respondent's attorney, who indicated that Respondent does not want to interview and refuses to be interviewed.

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DISCIPLINARY CONSIDERATIONS

34. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on January 3, 1997, in a prior disciplinary action entitled *In the Matter of the Accusation Against James Hiam [sic] Isidoro Bicher, M.D.*, before the Medical Board of California, in Case No. 05-90-2322, Respondent's license was revoked, however the revocation was stayed and his license was placed on probation for five years. That decision is now final and is incorporated by reference as if fully set forth herein.

35. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on September 30, 2004, in a prior disciplinary action entitled *In the Matter of the Accusation Against James H. I. Bicher, M.D.*, before the Medical Board of California, in Case No. 04-2000-114479, Respondent's license was revoked, however the revocation was stayed and his license was placed on probation for five years. That decision is now final and is incorporated by reference as if fully set forth herein.

36. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on August 23, 2006, in a prior disciplinary action entitled *In the Matter of the Accusation Against James Haim Isidoro Bicher, M.D.*, before the Medical Board of California, in Case No. 04-2003-142240, Respondent's license was revoked, however the revocation was stayed and his license was placed on probation for two years in addition to the terms of probation set forth in the Order in Case No. 04-2000-114479. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 37798, issued to James Haim Isidoro Bicher, M.D.;

2. Revoking, suspending or denying approval of James Haim Isidoro Bicher, M.D.'s authority to supervise physician assistants and advanced practice nurses;

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3. Ordering James Haim Isidoro Bicher, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: August 2, 2019

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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